ConsumersUnion
POLICY & ACTION FROM CONSUMER REPORTS

June 1, 2015

The Honorable Tom Wheeler
The Honorable Mignon Clyburn
The Honorable Jessica Rosenworcel
The Honorable Ajit Pai
The Honorable Michael O'Rielly
Federal Communications Commission
445 12 Street SW
Washington DC 20554

Re: Effective Competition Proposal, MB Docket No. 15-53

Dear Chairman Wheeler, and Commissioners Clyburn, Rosenworcel, Pai, and O'Rielly:

Consumers Union, the policy and advocacy arm of Consumer Reports, writes today to express concern about the Commission's proposal to presume a default finding of effective competition across the nation in the cable television market. Currently, in many areas of the U.S., there is no showing of effective competition, leaving the burden on the cable provider to make the case that it should be free from a host of regulations and consumer protections. The Commission has proposed to change this presumption and assume that effective competition exists nationwide by default, unless the local franchising authority finds differently.

Having recently advocated against the dangers of a combined Comcast-Time Warner Cable, we are surprised to see the FCC promote a regulation that would put even more power in the hands of large cable operators.

In our experience – and in the experience of consumers – there is little evidence to suggest that today's cable marketplace is a competitive one. By the Commission's own figures, the annual cost of monthly pay-TV continues to outpace the rate of inflation. Despite rising prices, consumers continue to express dissatisfaction with many of the largest cable providers. In Consumer Reports' most recent annual telecom service satisfaction survey, for example, many of the largest cable companies ranked at the bottom of our annual ratings. Furthermore, as we have noted in previous Commission filings, consumers continue to tell us that they have no competitive alternatives and find themselves without meaningful options due to how the cable market is carved up into geographical clusters.

The Commission points to the recent changes to the video marketplace as reason to change the presumption. For example, it notes the availability of DBS services and new video services, like those provided by AT&T and Verizon, as further evidence for the need for a presumption change. However, it is important to note that satellite is not an available option for many Americans, nor does it provide all consumers with the high speed broadband options that are available from cable companies.

In a truly competitive market, competing providers would work to keep customers happy or risk losing them to competitors. The fact that customers of the largest pay-tv services are highly dissatisfied with the services they receive, yet remain customers, is a strong indication that the market lacks competition, and is certainly relevant to the FCC's consideration of whether changing the presumption would be in the public interest.

During our recent advocacy efforts opposing the proposed Comcast-Time Warner Cable merger, Consumers Union had the opportunity to hear first-hand from hundreds of thousands of consumers who shared stories with us about unwarranted price hikes, improper equipment billing fees, and service outages that were not quickly and satisfactorily resolved at the local level. We are concerned that there is a real possibility these problems will only become worse if the local franchising authority's ability to regulate these factors is taken away.

Furthermore, it is important to note that there continues to be a trend of decreased competition across the larger telecommunications marketplace. Cable companies are increasing their influence and consolidating their presence in regionalized clusters around the nation. We question whether they will be able to facilitate competition on their own without local enforcement measures in place to ensure that companies adopt policies providing meaningful and affordable video choices to consumers. Consolidation among Internet service providers and cable companies could further choke off any potential benefits.

Though the cable industry argues that consumers are increasingly watching video and content online, these alternatives are far from becoming a true competitor to the current cable incumbents. Rather, online content's potential is hampered by large cable and media companies who use their market share as leverage to engage in practices preventing online distributors from reaching consumers. In short, cable continues to dominate. Distributors are increasingly vertically integrated with programmers or entities with ties to programming. And these distributors are more likely to carry a channel in which they have a vested interest.

Moreover, cable companies have introduced new business models in an effort to stop consumers from "cutting the cord." Unfortunately, some of these business models are anti-competitive and artificially restrict the choices available to consumers, locking them into subscription services they may not want in order to be able to access the content they're interested in.

We agree with others in the docket that many questions remain regarding the current definition of effective competition and whether it is effectively keeping large companies in check and preventing anticompetitive practices. We are also particularly concerned that the proposed change in presumption would have a negative impact on the cost of cable services.

Additionally, a default finding of effective competition could make it more difficult for local government to negotiate important consumer protections, threatening the availability of public, educational, and governmental (PEG) programming, and eliminating rules meant to protect consumers in the event of service outages or billing disputes. Local franchising regulations may also be needed to ensure that low-income areas are not excluded from any competitive alternatives in the video marketplace. A change in the presumption could also make it more difficult for local government to require service to the entire area, risking that companies will only invest and build out in the most profitable areas.

For all these reasons, it is critical to have effective consumer protections enforced and monitored at the local level to ensure that consumers are treated fairly and their complaints are resolved in a timely fashion.

We thank the Commission for its attention to these important considerations, which we believe to be in the public's best interest.

This letter is being filed electronically via ECFS according to the Commission's rules.

Respectfully,

Delara Derakhshani

Policy Counsel
Consumers Union

cc: Bill Lake
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